YUSOFF ABDUL LATIB

v.

HJ. ADNAN HJ. RAMLI & ANOR.

HIGH COURT MALAYA, PULAU PINANG
MOHAMED DZAIDDIN J
[ELECTION PETITION NO. 1 OF 1990]
30 SEPTEMBER 1991

ELECTIONS: *Election petition - Omission of name of state constituency in nomination paper - Whether affects validity of document - Whether Returning Officer correct in rejecting objection - Discretionary power - Elections Act 1958, s. 16 - Election Offences Act 1954 - Elections (Conduct of Elections) Regulations 1981, reg. 4(4)(a), 4(6), 28.*

STATUTORY INTERPRETATION: *General principles of construction - Ordinary natural meaning - Meaning of "place" and "constituency" - Elections (Conduct of Elections) Regulations 1981, reg. 4(4)(a), 4(6), 28.*

The petitioner P and the 1st respondent (R1) were candidates for the general election for the Penang state constituency of Permatang Pasir.

P stood as a candidate for PAS while R1 represented BN. On the nomination day of 11 October 1990 both candidates submitted their nomination papers to the Returning Officer, the 2nd respondent (R2).

On the same day a written objection was made by one M to R2 regarding R1's nomination paper (D1). It was alleged that D1 did not state the name of the constituency in which R1 was seeking election. Four other voters made similar objections.

However R2 informed P and M that he decided to overrule the objection as it was a technical error. This decision was reduced into writing.

Counsel for P submitted that reg. 4(4) of the Elections (Conduct of Elections) Regulations 1981 (the Regulations) is mandatory and that under para. 4(a) the nomination paper must state the name of the constituency. The issue was whether R2 was correct in rejecting the objection of P with respect to the omission of R1 to state the name of the state constituency of Permatang Pasir N11 in his nomination paper on 11 October 1990?

Held:

[1] By para. (6) of reg. 4, failure to comply with para. (4)(a) shall render the nomination paper to be rejected by the Returning Officer. Regulation 4(4) must be read in the light of proviso (ii) of para. 6 which gives the Returning Officer the discretionary power either to reject or accept the nomination. It is plain that he cannot reject the nomination paper on account of any error or omission with regard to any place specified therein, if such place is otherwise sufficiently identifiable from the particulars given in the said nomination papers.

[2] In the context of para. 4(a) of reg. 4 the word "place" must be intended to include the "constituency" in which the candidate seeks election. R2 had sufficiently identified the name of the constituency after examining the particulars of the proposer and the seconder, who must be voters for the constituency of Permatang Pasir N11 their numbers in the electoral roll and the polling district code numbers.

[3] Regulation 28 reinforces para. 6 of reg. 4 with respect to any error with regard to the name of any place or any particulars or any description thereto. Under para. (2) of reg. 28 "document" is defined to include nomination paper and "error" means *inter alia* mistake, inaccuracy and omission. Therefore the omission to state the name of the constituency does not make the nomination paper D1 void. R2 had properly rejected the objections of P regarding D1.

[Petition dismissed with costs.]

Cases referred to:
Exxon Corpn. v. Exxon Insurance Consultants International [1981] 2 All ER 495 ***(foll)***
Barnes v. Jarvis [1953] 1 WLR 649 ***(foll)***

Legislation referred to:
Elections Act 1958 (Act 19), s. 16
Elections (Conduct of Elections) Regulations 1981, regs. 4(1), (3), (4)(a), (b), (c), (d), (e), 4(6), 28(1), (a), (b)

Other source referred to:
The Shorter Oxford English Dictionary, 3rd Edn.

For the petitioner - Mohideen Abdul Kader; S. Mohideen & Asamaley
For the 1st respondent - R.J. Manecksha; M/s. Ong & Manecksha
For the 2nd respondent - Noor Azian Bte. Shaari with Andri Aidham, Attorney-General's Department
Observer for Barisan Nasional - K. Vijayanathan; M/s. K. Vijaya
Observer for Penang State Government - Ahmad Zaki bin Haji Husin, State Legal Advisor

JUDGMENT

Mohamed Dzaiddin J:

The issue in this election petition is very simple. Was the returning officer correct in rejecting the objection of the petitioner with respect to the omission of the 1st respondent to state the name of the State Constituency of Permatang Pasir N11 in his nomination paper on 11 October 1990?

The facts are also very simple. Both the petitioner and the 1st respondent were candidates for the Penang State Constituency of Permatang Pasir (N11) in the last general election. The petitioner was the Parti Islam Sa Malaysia (PAS) candidate whilst the 1st respondent represented the Barisan Nasional. On nomination day on 11 October 1990 both candidates submitted their nomination papers to the 2nd respondent at Bangunan Yayasan Aman, Penanti, Seberang Perai Tengah, the place of nomination for three state Constituencies, including Permatang Pasir N11, and the Parliamentary Constituency of Permatang Pauh. After 11 a.m. the 2nd respondent caused a copy of each of the candidates' nomination papers to be posted outside the Bangunan. At about 11.30 a.m. one Mansor bin Said (PW2) made a written objection to the 2nd respondent regarding the nomination paper of the 1st respondent (D1) on the ground that D1 did not state the name of the constituency in which the 1st respondent was seeking election. Four other voters made similar objections. For the sake of clarity, the material parts of D1 are as follows:

Akta Pilihanraya 1958

Peraturan-Peraturan Pilihanraya (Penjalanan Pilihanraya) 1981

Borang 4A

[Peraturan 4 (3)]

Negeri Pulau Pinang

Kertas Penamaan

Bahagian-pilihanraya Negeri **Pulau Pinang**

(The emphasis is mine.)

Nama Penuh	:	MD Isa Bin Haji Ramli
No. K.P.	:	3480404
Nama-nama lain, jika ada	:	-Tiada-
Pekerja, jika ada:		-Tiada-
Alamat Tempat Tinggal	:	632 Kampong Pelet, 14400 Kubang Semang, Bukit Mertajam
Alamat Dalam Bahagian-pilihanraya	:	632 Kampong Pelet, 14400 Kubang Semang, Bukit 1

After 12.30 p.m., the 2nd respondent informed the petitioner and PW2 that he decided to overrule the objection on the ground that it was a technical error and then reduced his decision into writing (R26). In his evidence, the 2nd respondents reiterated that the omission of the name of the constituency under "Bahagian-pilihanraya Negeri ..." in D1 was a technical error. He also testified that he examined D1 and after checking the particulars of the proposer and the seconder in D1, the polling district code numbers and the electoral roll numbers, he was satisfied that D1 was the nomination paper for the State Constituency of Permatang Pasir (N11).

The Law

Elections in Malaysia are regulated and governed by the Elections Act 1958 (Act 19) and the Election Offences Act 1954 and regulations made in pursuance of s. 16 of Act 19. For the present purpose we are concerned with the Elections (Conduct of Elections) Regulations 1981 and the material regulations are:

> 4(1) Any person eligible for election as a member of the Dewan Rakyat, or of the Legislative Assembly of a State, in accordance with the provisions of the Constitution of Malaysia, or the Constitution of a State, as the case may be, may be nominated as a candidate for election.
>
> (2) ...
>
> (3) Candidates shall be nominated by means of nomination papers which shall be as set out in Form 4 or 4A, as the case may be, in the First Schedule. Such nomination papers shall be

submitted in triplicate.

(4) Each nomination papers shall be completely and correctly filled and shall state:

(a) the name of the constituency in which the candidate seeks election;

(b) in the case of election to a State Legislative Assembly, the name of the state concerned;

(c) the full name, other names, if any, identity card number, occupation, if any, and residential address of the candidate, and the candidate's address within the constituency for which the candidate seeks election to which documents relating to the election may be sent;

(d) the name, the polling district code, the number in the electoral roll and identity card number of the proposer and seconder, whose names must appear in the electoral rolls for the time being in force for the constituency for which the candidate seeks election; and

(e) the name, identity card number and address of the witness in the presence of whom the candidate affixes his signature.

(5) ...

(6) Failure to comply with para. (3), (4) or (5) shall render the nomination paper liable to be rejected by the returning officer:

Provided that no nomination paper shall be rejected on account of:

(i) any error or omission in the nomination paper in relation to the description of, or any particulars in respect of, the candidate, or his proposer, or his seconder, if the particulars contained in the nomination paper are sufficient to identify the candidate, or his proposer, or his seconder, as the case may be;

(ii) any error or omission with regard to any place specified in the nomination paper, if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper; or

(iii) any error or omission which is capable of being corrected and is corrected upon being brought to the attention of the person presenting the nomination paper:

Provided further that the returning officer may direct that any clerical or printing error in the entries in the nomination paper be overlooked if the error is not of any material significance and does not affect the identification of the candidate, his proposer, or his seconder, or the identification of the constituency in respect of which the nomination paper is delivered.

It is also relevant to state reg. 28 which reads as follows:

(1) No error with regard to:

(a) the name of any person or place; or

(b) any particulars, or any description, of, or in respect of, any person or place,

mentioned in any document whatsoever prepared, issued or used under or for the purpose of these regulations shall in any manner affect the validity of such document or the operation of these regulations in respect of that person or place if the contents of the document are otherwise sufficient to identify that person or place.

(2) In this regulation:

"document" includes any writ, report, return, list, form, notice, notification, nomination paper, statutory or other declaration, and any document of any other description or nature;

"error" includes any misnomer, misspelling, misprint, misplacement, mistake, inaccuracy, omission, any clerical, technical or printing error, and any error of any other description or nature; and

"particulars" and "description" each includes anything stated or required to be stated in respect of any person or place in any document.

(3) In so far as this regulation applies to a nomination paper, the provisions of this regulation shall be construed as being in addition to, and in amplification of, and not in derogation of, the provisions of the provisos to reg. 4(6).

Before me the arguments of Counsel were centered on the interpretations of the above reg. 4(4)(a) and 4(6) and its proviso and reg. 28. Haji Mohideen submitted that reg. 4(4) is mandatory and under para. (4)(a) the nomination paper must state the name of the constituency. The 2nd respondent was wrong in rejecting the petitioner's objection on the ground of technicality and by exercising his powers under proviso (ii) of reg. 4(6). Counsel contended that the aforesaid proviso of reg. 4(6) did not apply to reg. 4(4)(a) because under this regulation it is imperative that the name of the constituency must be specified in the nomination paper. It was also contended that in exercising his powers under proviso (ii) of reg. 4(6) the 2nd respondent cannot look at the particulars of the proposer and seconder given in D1 pursuant to reg. 4(4)(c) and (d) to infer that the name of the constituency in which the 1st respondent was seeking election was Permatang Pasir N11. Counsel submitted that if such an interpretation is accepted it may give rise to an absurd situation. Lastly, he argued that the 2nd respondent cannot look at documents other than the nomination paper in order to identify the constituency in which the 1st respondent was seeking election. I think what Haji Mohideen has in mind was the evidence of the 2nd respondent that he took into account the particulars in the deposit receipt (D2) paid on behalf of the 1st respondent for RM3,000 which stated "the deposit for Barisan Nasional candidate for state election N11 - Permatang Pasir." The particulars of D2 including the receipt number of D2 were written on the top right hand corner of D1A and signed by the 2nd respondent.

Both Noor Azian and R. Manecksha submitted that proviso (ii) of reg. 4(6) applied here because the words "any place specified in the nomination paper" can be construed to include the name of the constituency under reg. 4(4)(a). Counsel further submitted that the 2nd respondent was correct in his decision by taking into consideration the particulars of the proposer and the seconder in D1 as well as the polling district code numbers and their electoral roll numbers in determining the name of the constituency of the candidate. In short, the crux of their submissions is that the 2nd respondent had applied his mind correctly on the proviso (ii) of reg. 4(6) and had come to a correct conclusion that the omission to state the name of the constituency in D1 was not fatal but merely technical. In addition, Rumi, submitted the error with respect to reg. 4(4)(a) is saved by the general provision in reg. 28 which states that any error with regard to a place of any description of such place shall not affect the validity of any document under the regulations and reg. 28 must be construed as being in addition to and amplification of proviso (ii) of reg. 4(6).

It is clear to me that under reg. 4(4) nomination papers shall not only be completely and correctly filled, but shall also state, *inter alia*, the name of the constituency in which a candidate seeks election. In the instant case, in D1, after the words "Bahagian Pilihanraya Negeri" were the words "Pulau Pinang". In my opinion, reading these words in the context of para. 4(a) an error was committed here because on a proper construction of para. (4)(a) the words "Pulau Pinang" cannot be intended to be the name of the constituency. On the other hand, it is the legislative intention that the name of the constituency must refer to

"Permatang Pasir N11" because it was the constituency in which the 1st respondent was seeking election. It follows that by para. (6) of regulation 4 failure to comply with para. (4)(a) shall render the nomination paper to be rejected by the returning officer. However, reg. 4(4)(a) must be read in the light of proviso (ii) of para. 6. This proviso says that no nomination paper shall be rejected by the returning officer on account of any error or omission with regard to any place specified in the nomination paper, if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper. It is thus clear to me that the above proviso gives the returning officer the discretionary power either to reject or accept the nomination. It is plain that he cannot reject the nomination paper on account of any error or omission with regard to any place specified therein, if such place is otherwise sufficiently identifiable from the particulars given in the said nomination papers.

Thus, what is required to be discussed first is the meaning of the word **"place"** specified in the nomination paper. It is one of the general principles of construction that words should be given its ordinary natural meaning.

> The words must be treated as having their ordinary english meaning as applied to the subject matter with which they are dealing (per Graham J in *Exxon Corpn. v. Exxon Insurance Consultants International* [1981] 2 All ER 495 at 502).

As a matter of english usage, the word "place" has several meanings. *The Shorter Oxford English Dictionary*, 3rd Edn., gives the following meanings *viz*. an open space in a city, a square, a market-place, locality, a general designation for a city, town, village. In my opinion, in the context of para. 4(a) of reg. 4 the word "place" must be intended to include the "constituency". According to the same dictionary, "constituency" means:

> a body of constituents; in looser use, the whole body of residents in a place so represented, the place itself.

Therefore, it is my conclusion that the reference to any **"place"** under proviso (ii) is intended to include "the constituency" in which the candidate seeks election under reg. 4(4)(a).

Secondly, how does the returning officer satisfy himself "if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper"? I think one should not lay too much stress on the meaning of the words "sufficiently identifiable" for the word "sufficient" simply means "enough" Lord Goddard CJ in *Barnes v. Jarvis* [1953] 1 WLR 649 said at p. 652 that:

> a certain amount of common sense must be applied in construing a statute.

Hence, in my opinion, in the context of reg. 4(4)(a) the 2nd respondent can look at other particulars in the nomination paper to discover the name of the constituency which the 1st respondent was seeking election. Based on evidence, I am satisfied that the 2nd respondent had sufficiently identified the name of the constituency after examining the particulars of the proposer and the seconder, who must be voters for the constituency of Permatang Pasir N11, their numbers in the electoral roll and the polling district code numbers.

It seems clear to me that reg. 28 reinforces para. 6 of reg. 4 with respect to any error with regard to the name of any place or any particulars or any description thereto. Regulation 28(1) says that any error with regard to the name of any person or place or their particulars or descriptions mentioned in any document issued for the purpose of these regulations shall not affect the validity of such document. Under para. (2) "document" is defined to include nomination paper and "error" means, *inter alia*, mistake, inaccuracy and omission. I think it must also be emphasized here that para. (3) stipulates that in so far as regulation 28 applies

to a nomination paper, such as in the instant case, its provisions shall be construed as being in addition to and in amplification of, and not in derogation of the provisions of the provisos to reg. 4(6).

Therefore, based on the evidence and the circumstances of this case and after applying the provisions of regs. 4(6) proviso (ii) and 28, in my judgment, the omission to state the name of the constituency of **Permatang Pasir N11** or in Bahasa Malaysia "Kawasan Permatang Pasir N11" after the words "Bahagian Pilihanraya Negeri" does not make the nomination paper D1 void. I am also satisfied that the returning officer, the 2nd respondent, had in this case properly rejected the objections of PW2 and four others regarding D1. Accordingly, I dismiss this petition and order that the petitioner pays the respondents costs of this petition.

Also found at [1992] 1 CLJ 223

This page is intentionally left blank